

**Digests Of Unpublished Decisions Of  
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**Volume I**



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**UNITED STATES GENERAL ACCOUNTING OFFICE**

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December 1984

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B-188093, Oct. 18, 1977 modified by B-214966, Dec. 27, 1984.

B-189622, Mar. 24, 1978, distinguished by B-215736, Dec. 3, 1984.

B-193432, B-211194, Aug. 16, 1984, reversed by 64 C.G. \_\_\_\_\_  
(B-193432, Dec. 3, 1984)

B-209446.2, Apr. 29, 1983 distinguished by B-216699, Dec. 27, 1984

B-210139, May 20, 1983, B-207136, Aug. 26, 1982, distinguished by B-215999, Dec. 10, 1984.

B-210660, Sept. 27, 1984 affirms B-210660, Dec. 26, 1984.

*GENERAL GOVERNMENT MATTERS  
APPROPRIATIONS AND MISCELLANEOUS*

*B-216330 Dec. 4, 1984*

*GENERAL ACCOUNTING OFFICE--DECISIONS--ABEYANCE--PENDING COURT,  
QUASI-JUDICIAL, APPELLATE BOARD, ETC. ACTION*

Since the question of the authority of the Student Loan Marketing Association (SLMA) to acquire and operate a savings and loan association (S&L) is currently the subject of ongoing litigation, and since SLMA does not receive Federal appropriations, our Office is not in a position to render a definitive opinion as to whether SLMA's acquisition of the S&L exceeded its authority, but has prepared a "pro" and "con" analysis of the question. The primary argument favoring SLMA's authority to acquire the S&L is based on the broad statutory language in 20 U.S.C. 1087-2(d)(1)(D) authorizing SLMA's Board of Directors to undertake "any other activity" that the Board determines will further the credit needs of students. The main arguments supporting the opposite conclusion are based on (1) the proposition that Congress never intended for SLMA to acquire a private lending institution and (2) the strong possibility that some of the activities the S&L will be engaging in are not within SLMA's authority to perform directly.

*B-211953 Dec. 7, 1984*

*DEPARTMENT AND ESTABLISHMENTS--SERVICES BETWEEN--REIMBURSEMENT--  
GENERAL SERVICES ADMINISTRATION--RECORDS MANAGEMENT, ETC.*

Where General Services Administration (GSA) is required by law and implementing regulations and standards issued by GSA to store and service noncurrent agency records transferred to Federal Records Centers (provided space is otherwise available) and receives appropriations for this purpose, it may not seek reimbursement for its costs incurred in storing these records under 31 U.S.C. 1535 and 1536 (1982) since this would constitute an unauthorized augmentation of GSA's appropriations. However, it may enter into an

agreement and recover the cost of storing current agency records since it is not required to do this and receives no appropriation for this purpose.

*ECONOMY ACT--SERVICES BETWEEN AGENCIES--WHAT CONSTITUTES "SERVICES"*

Even if current Internal Revenue Services (IRS) records are deemed stored by General Services Administration pursuant to interagency agreement calling only for reimbursement of servicing costs by IRS, IRS is required to pay Standard Level User Charges costs attributable to the storing of its current records, since all elements of actual costs (direct and indirect) which are proper are required to be reimbursed under the law. 31 U.S.C. 1535 (1982).

*GENERAL SERVICES ADMINISTRATION--SERVICES FOR OTHER AGENCIES, ETC.--SPACE ASSIGNMENT--RENTAL--STANDARD LEVEL USER CHARGE*

Where General Services Administration stores and services current Internal Revenue Services (IRS) records at Federal Records Centers which it is not required to store free of charge and requests IRS to pay Standard Level User Charges (SLUC) related thereto, this constitutes a constructive assignment of space to IRS for storing records. Therefore, IRS is liable for payment of SLUC attributable to storing current records to Federal Buildings Fund.

*B-215433 Dec. 10, 1984*

*DISBURSING OFFICERS--LACK OF DUE CARE, ETC.--EVIDENCE*

On reconsideration, relief is granted Army disbursing office under 31 U.S.C. 3527(c) in two cases where substitute checks bore the same date as the original checks. Under Joint Uniform Military Pay System-Army (JUMPS), offices procedures substitute checks are required to be issued which are identical in form to the original check. This has been interpreted to mean

that both checks must bear the same date regardless of when issued. Since all checks are normally mailed, notification by an individual payee probably would be received about 3 days after issuance. Therefore, in these two cases, we assume that there was an adequate interval between the issuance of the original and substitute checks to reasonably support a claim of nonreceipt due to a check having been "lost, stolen, or destroyed."

*B-216823 Dec. 10, 1984*

*DISBURSING OFFICERS--RELIEF--ERRONEOUS PAYMENTS--NOT RESULT OF BAD FAITH OR NEGLIGENCE*

Relief is granted Army disbursing official and her supervisor under 31 U.S.C. 3527(c) from liability for improper payment resulting from payee's negotiation of both original and substitute military checks. Proper procedures were followed in the issuance of the substitute check, there was no indication of bad faith on the part of the disbursing official and her supervisor, and subsequent collection attempts have been pursued.

*B-214273 Dec. 11, 1984*

*ACCOUNTABLE OFFICERS--RELIEF--ILLEGAL OR ERRONEOUS PAYMENTS--WITHOUT FAULT OR NEGLIGENCE*

Relief granted to finance and accounting officer, supervisory voucher examiner, and disbursing officer for losses due to improper payments of contract proceeds to assignor instead of assignee. Finance and accounting officer maintained an adequate system of procedures and controls to safeguard funds and supervisory voucher examiner followed them to best of her ability, in view of large numbers of vouchers processed each month. Disbursing officer acted reasonably in relying on information given to him which, though erroneous, could not have been detected by him.

B-217209 Dec. 11, 1984

ACCOUNTABLE OFFICERS--RELIEF--ADMINISTRATIVE RECOMMENDATION--  
ABSENT

Notwithstanding agency's submission evidencing that a burglary took place, GAO cannot grant relief for loss of agency funds in absence of relief request from appropriate agency official which identifies the accountable officer and makes the findings required by 31 U.S.C. 3527(a).

B-212603, et al., Dec. 12, 1985

ACCOUNTABLE OFFICERS--RELIEF--ILLEGAL OR ERRONEOUS PAYMENTS--  
WITHOUT FAULT OR NEGLIGENCE

On reconsideration, relief granted an Army supervising financial officer for erroneous payment of five forged checks totaling \$1780 from his accounts. Additional information submitted conclusion that the officer maintained and policed an adequate system of procedures and controls to avoid errors.

Relief granted to finance and accounting officer for loss of \$487 resulting from two improper payments since officer maintained and policed an adequate system of procedures and controls to avoid errors.

B-216670 Dec. 13, 1984

TRANSPORTATION--PASSENGER--OTHER THAN GOVERNMENT PERSONNEL--  
AUTHORITY

Transportation provided Vatican Ambassador to the United States in military aircraft following meeting with the President did not violate 31 U.S.C. 1344(a) which requires that Government aircraft be used only for an official purpose. Separation of church and state was not violated because religious affiliation of Ambassador was not relevant.

*B-215833 Dec. 21, 1984*  
*ACCOUNTABLE OFFICERS--RELIEF--ILLEGAL OR ERRONEOUS PAYMENTS--*  
*WITHOUT FAULT OR NEGLIGENCE*

U.S. Army Finance and Accounting Officer is relieved of liability for improper payment of a check with a forged endorsement made by subordinate cashier where he maintained and supervised adequate system of procedures designed to prevent improper payment. Cashier is also relieved of liability for making improper payment where she complied with existing procedures which did not detect criminal activity resulting in payment.

*B-207463 Dec. 27, 1984*  
*ENERGY--DEPARTMENT OF ENERGY--URANIUM ENRICHMENT PROGRAM--*  
*ACCOUNTING SYSTEM*

A write-off on Department of Energy's (Energy's) uranium enrichment program's financial statement of a portion of the program's undepreciated plant and capital equipment attributable to unused capacity would be in accordance with Generally Accepted Accounting Principles (GAAP), but the write-down more appropriately should be 26 percent, representing the percentage of unused production capacity. However, Energy cannot use a financial statement adjustment to justify excluding these costs from its pricing formula. Full cost recovery from customers, including full depreciation, was statutorily required after 1970 in every instance except where the Conway Excess Capacity Formula is applicable. Consequently, a write-down now, although permissible under GAAP, would not be in accord with Energy's statutory pricing mandate of subsection 161(v) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(v), requiring cost recovery for Energy's uranium enrichment program, and would violate the statute.

~~ENERGY~~--DEPARTMENT OF ENERGY--URANIUM ENRICHMENT PROGRAM--  
ACCOUNTING SYSTEM

Revaluation from average market price to acquisition cost by Department of Energy (Energy) of its uranium feed stockpile for determination of use value for pricing purposes is not governed by Generally Accepted Accounting Principles. In addition, subsections 63(c) and 161(m) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2093(c) and 2201(m), have sufficient flexibility to permit such a revaluation, but for concern over the impact on the domestic uranium mining and processing industries. However, Energy could not legally price uranium feed from its stockpile in conjunction with its enriching services at any price below its acquisition cost.

~~ENERGY~~--DEPARTMENT OF ENERGY--URANIUM ENRICHMENT PROGRAM--  
STATUTORY REQUIREMENTS

Department of Energy (Energy) did not follow prescribed statutory requirements governing its uranium enrichment program by acting unilaterally regarding its new Utility Services Contract, in light of the provisions of subsection 161(v) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(v), section 501 of the Department of Energy Organization Act, 42 U.S.C. 7191, and the Administrative Procedure Act, 5 U.S.C. 551 et seq. The aspects of the program potentially affected include: (1) issuance of a new, generic type of contract; (2) any amendment of uranium enrichment services criteria; (3) any price change for uranium enrichment services; and (4) accounting charges that effect the prices charged.

*B-207463 Dec. 27, 1984 - Cont.*  
*ENERGY--DEPARTMENT OF ENERGY--URANIUM ENRICHMENT PROGRAM--*  
*STATUTORY REQUIREMENTS*

Department of Energy (Energy) should have amended its uranium enrichment services criteria to conform them to anticipated provisions of its new Utility Services Contract, because that contract includes provisions that either conflict with or are not specifically authorized by current criteria. Events of 1973 support neither a conclusion that Energy has unrestricted flexibility in what it places in its enrichment contracts nor that Energy can bypass amending its criteria before including a new, major feature in its contracts. In particular, current criteria do not provide sufficient flexibility for Energy's inclusion of a guaranteed ceiling price in its enrichment contracts, when all the guaranteed ceiling price provisions were purposely deleted from the criteria in 1973 at the initiative of the Atomic Energy Commission, Energy's predecessor agency.

*B-215580 Dec. 31, 1984*  
*AGREEMENTS--INTERAGENCY--TRANSACTIONS BETWEEN GOVERNMENT*  
*AGENCIES AND NONAPPROPRIATED FUND INSTRUMENTALITIES--*  
*PROPRIETY*

Army proposal to procure child care services from an Army nonappropriated fund instrumentality (NAFI) through the use of an intra-Army order is not permissible. Intra-agency or interagency orders are not appropriate vehicles for transactions between Government agencies and NAIs. Obtaining goods and services from a NAFI is tantamount to obtaining them from nongovernmental commercial sources, and a regular purchase order rather than an interagency or intra-agency order should be used.

PERSONNEL LAW: CIVILIAN PERSONNEL

B-215701 Dec. 3, 1984

MILEAGE--TRAVEL BY PRIVATELY OWNED AUTOMOBILE--INCIDENT  
TO TRANSFER--MORE THAN ONE AUTOMOBILE

An employee, pursuant to a permanent change-of-station transfer, was authorized travel for himself and his immediate family using two privately owned vehicles. He traveled by air to his new duty station in advance of his family and had one of his vehicles shipped there. Although his air fare was paid, he seeks reimbursement for both vehicles on a constructive mileage basis. Under the Federal Travel Regulations (FTR), Chapter 2, Part 2, the basic entitlement of an employee on a transfer is that each family member is entitled to a single, one-way trip to the new duty station. Since the employee had already performed travel to new station and the one vehicle left at old station accommodated the other members of his family, mileage reimbursement is limited to the one vehicle which transported his family, at rates prescribed in FTR, para. 2-2.3(b).  
Gary E. Pike, B-209727, July 12, 1983.

OFFICERS AND EMPLOYEES--TRANSFERS--TEMPORARY QUARTERS--  
TIME LIMITATION

An employee, pursuant to a permanent change-of-station transfer, reported for duty on February 8, 1983. He was paid temporary quarters subsistence expenses for himself for the period February 8-26, 1983. Family members arrived at the new station on June 26, 1983, and remained in temporary quarters until July 6, 1983. The employee's claim for subsistence expenses for himself and his family during the second period, in addition to that claimed for the first period, is not allowed. Entitlement to temporary quarters subsistence expenses under the Federal Travel Regulations (FTR), Chapter 2, Part 5 is for a consecutive day period only, not to exceed 30 days, and runs concurrently for all family members. However, under FTR para. 2-5.2(e), the period of temporary quarters may be deferred until the family members arrive at the new station, and the employee has the option of claiming either the earlier period or the later period, whichever provides the greater benefit.

*B-215733 Dec. 3, 1984*  
*OFFICERS AND EMPLOYEES--TRANSFERS--TEMPORARY QUARTERS--*  
*INTENT--BURDEN OF PROOF*

Veterans Administration employee who was transferred seeks reimbursement for cost of first month's subsistence expenses after relocation on the basis that he occupied temporary quarters. Employee and family resided during that time in a home he eventually purchased. The employee's claim for temporary quarters subsistence expenses is denied because the record contains insufficient indicia of his intention to temporarily reside in the home. Further, the amended travel regulations are not applicable here since the employee reported to duty prior to the October 1, 1982, effective date of the amendment.

*B-215012 Dec. 4, 1984*  
*OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--*  
*LOCATION LIMITATION--PERMANENT DUTY STATION--EMPLOYEE IN*  
*CONSTANT TRAVEL STATUS*

When an employee who was in a constant travel status is transferred, he may be reimbursed for the real estate expenses incurred in selling his former residence, even though it was not located at the place that was administratively designated as his duty station and he did not commute daily to that residence.

*OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--*  
*REFINANCING*

An employee purchased a residence at his new duty station through a real estate installment contract under which he obtained equitable title upon the execution of the contract and would be given a full warranty deed upon full payment. He may be reimbursed for additional expenses associated with refinancing the contract paid within 1 year of the transfer.

*B-215311 Dec. 4, 1984*

*CIVIL RIGHTS ACT--TITLE VII--DISCRIMINATION COMPLAINTS--  
INFORMAL AGENCY SETTLEMENT--WITHOUT DISCRIMINATION  
FINDING--CASH AWARD LIMITATIONS*

Federal Communications Commission (FCC) employee temporarily detailed to higher grade position filed complaint alleging race, sex, and age discrimination because she was not temporarily promoted to the higher grade level. The FCC made a proposed finding of no discrimination and reached settlement agreement with employee. Because proposed settlement award exceeds amount the employee would be entitled to receive under Title VII of the Civil Rights Act of 1964, as amended, if discrimination had been found, it must be reduced. Backpay for the period employee was ineligible for promotion to higher grade because of insufficient time in grade, may not be included in settlement. Additionally, backpay for period employee was performing duties of position to which she was officially appointed, during which period no discrimination is alleged may not be included in settlement.

*B-216189 Dec. 5, 1984*

*TRANSPORTATION--TRAVEL AGENCIES--RESTRICTION ON USE--  
VIOLATIONS BY GOVERNMENT TRAVELERS--REIMBURSEMENT CLAIMS--  
CRITERIA FOR ALLOWANCE*

Federal agency authorized travel of state employee to a conference, and the employee improperly purchased air transportation with an agency-issued Government Transportation Request through a travel agent. The agency may reimburse the travel agent where the improper use of the travel agent was inadvertent and where the agency has taken corrective action to avoid future occurrences. Payment to the travel agent may not exceed the cost of the transportation if purchased directly from the air carrier.

*B-214453 Dec. 6, 1984*

*OFFICERS AND EMPLOYEES--DUTIES--PERFORMANCE AT HOME*

The payment of salaries for a select group of typists assigned to work at their homes is not legally ob-

jectionable where their actual work performance can be measured against established quantity and quality norms so as to verify time and attendance reports.

*B-215552 Dec. 11, 1984*

*OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--  
INSPECTION FEES*

A transferred employee purchased a residence at his new station and assumed the seller's mortgage. The cost of title search and examination were split equally between the employee and the seller. The employee seeks reimbursement of his share of that cost on the basis of local custom. Under FTR, para. 2-6.2c(1), the cost of title search and examination is reimbursable, if it is customarily paid by the employee and if it does not exceed amount customarily charged in the area. These conditions are met in the present case.

*OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--  
TITLE INSURANCE POLICY*

A transferred employee purchased a residence at his new duty station and assumed the seller's mortgage. He purchased an owner's title insurance policy and split its cost with the seller. The employee seeks reimbursement of his share of the costs on the basis that such cost splitting is the custom of the area. Under FTR, para. 2-6.2d(1)(i), reimbursement for cost of such policy may be allowed, but only if it is a prerequisite to financing or property transfer, or the costs are inseparable from other insurance costs. Since neither condition exists in this case, reimbursement may not be allowed.

*B-215285 Dec. 13, 1984*

*TRAVEL EXPENSES--CONSTRUCTIVE TRAVEL COSTS--COMPUTATION*

For personal convenience a Government employee traveled on temporary duty by privately owned automobile and claimed mileage with per diem. The certifying officer computed reimbursement on a lower constructive cost basis

derived from a coach airfare. The employee disputed availability of the service and fare at the time of travel, and contends an available Super Saver airfare contained objectionable restrictions. The agency has demonstrated, however, that the lower airfare was the established coach airfare (not a Super Saver fare involving added restrictions) at the time travel was performed. Since the schedule used by the agency satisfied travel needs, the lower constructive combined costs of transportation and per diem is the proper limitation for reimbursement.

*B-214902 Dec. 17, 1984*

*SUBSISTENCE--PER DIEM--RATES--EN ROUTE--OUTSIDE UNITED STATES--AIR TRAVEL*

Even though an employee's travel order authorized the maximum daily subsistence rate for actual expenses at two high-rate geographical area rest stop locations in the United States at the beginning and end of international travel, the Federal Travel Regulations only permit the employee to be reimbursed a lower per diem rate when these locations are intermediate stop-over points at which no official duty is performed. Since there is no indication of unusual circumstances at the rest stop points that would justify the approval of actual expenses, the employee may be reimbursed only the per diem rate.

*B-211626 Dec. 19, 1984*

*SET-OFF--COMPENSATION, ETC. DUE CIVILIAN EMPLOYEES-- HEARING RIGHT PRIOR TO SET-OFF--*

A Department of Energy authorized certifying officer asked whether an employee's debt determined by the Comptroller General remains after a hearing official subsequently determines under 5 U.S.C. 5514(a) (1982) that there is no debt. Section 5514(a) pertains only to salary offset. Therefore, we conclude that only the salary offset remedy is precluded by the hearing official's determination under section 5514(a). The employee remains indebted to the United States under our prior determination. Unless other administrative remedies are available to collect this debt, this debt should be referred to the Department of Justice for further collection action.

*B-211626 Dec. 19, 1984 - Con.*  
*SUBSISTENCE--PER DIEM--TEMPORARY DUTY--LONG-TERM ASSIGNMENTS*

In our decision J. Michael Tabor, B-211626, July 19, 1983, we determined that a Department of Energy employee was on permanent--rather than temporary--duty in Washington, D.C., from October 1981 to April 1983. Upon reconsideration, we conclude that the employee may be considered to have been properly on temporary duty in Washington from October 1981 through December 1981, but to have been transferred to Washington after that and on permanent duty there through April 1983. Whether an assignment to a particular location should be considered a temporary duty assignment or a permanent change of duty station is a question of fact. Here, the employee's assumption of the permanent duties of an administrative assistant, cessation of the performance of his designated permanent duty station duties for between 14 and 15 months, lack of travel orders specifically assigning him to temporary duty in Washington, and listing of Washington on his vouchers as his present duty station, support our conclusion. The amount of the employee's debt should be reduced accordingly.

*B-215617 Dec. 21, 1984*  
*SUBSISTENCE--PER DIEM--HEADQUARTERS--TEMPORARY EMPLOYEES'*  
*ENTITLEMENT TO TRAVEL, PER DIEM, AND SALARY*

Employee, while holding a temporary appointment as a student trainee under the Cooperative Education Program of the Forest Service, performed almost all of her duties at the Red Ives Ranger Station near Avery, Idaho, during two periods of service. Between the periods of service, she was in a leave-without-pay status, and following the second one she received a career-conditional appointment. The longstanding rule is that an employee may not be paid per diem at his or her official duty station. Since claimant, while a student trainee, did not have a permanent duty station to which she reported during the period she was on leave without pay, and inasmuch as Red Ives was her official station where she performed almost all of her duties, she may not be paid a per diem allowance for her time at that duty station.

B-207143 Dec. 26, 1984

*DECEDENTS' ESTATES--COMPENSATION--ABSENCE OF DESIGNATED  
BENEFICIARY--"NEXT OF KIN"--PROOF*

A claim for the unpaid compensation of a deceased employee filed by his daughter on behalf of herself and her brother and sister of the whole blood was previously denied because of insufficient evidence that they were the legal beneficiaries of the claimed pay and that they constituted the entire class of individuals entitled to the payment. Although the issues then in doubt are unresolved, the other potential beneficiaries have failed to file claims for the unpaid compensation within 3 years of the former employee's death. Under the rule stated at 4 C.F.R. 33.6(d) payment of the claim may be issued to the deceased employee's children on whose behalf the claim has been filed.

B-210660 Dec. 26, 1984

*MILEAGE--TRAVEL BY PRIVATELY OWNED AUTOMOBILE--BETWEEN  
RESIDENCE AND TEMPORARY LODGINGS*

For the purpose of mileage reimbursement under Volume 2, Joint Travel Regulations, para. C2153, the terms "residence" and "place of abode" refer to the place from which an employee regularly commutes. Thus, an employee who commutes from temporary lodging to alternate work sites in the vicinity of his official headquarters is entitled to mileage only between the work sites and the temporary lodging, not between the work sites and a residence 160 miles away.

Joe B. Knight, B-210660, September 27, 1983, affirmed.

B-214975 Dec. 26, 1984

*STATUTES OF LIMITATION--CLAIMS--CLAIMS SETTLEMENT BY GAO--  
SIX YEARS AFTER DATE OF ACCRUAL*

Effective July 2, 1975, the time for filing claims against the United States with the Comptroller General of the United States was changed from 10 years to 6 years. See Public Law 93-604, now codi-

fied at 31 U.S.C. 3702(b) (1982). A claim filed by an employee of the National Park Service, Department of the Interior, for the period from 1970 to 1981 is governed by the 6-year limitation period. The Comptroller General is without authority to waive or modify the provisions of 31 U.S.C. 3702(b).

*STATUTES OF LIMITATION--CLAIMS--DATE OF ACCRUAL--  
COMPENSATION PAYMENTS--BACKPAY*

An employee filed a claim on July 24, 1981, with his employing agency for retroactive environmental differential pay. The claim was paid by the agency on October 13, 1982, for the 6-year period beginning July 24, 1976, but the claim was not received in the General Accounting Office (GAO) until December 7, 1982. Where the claim has not been recorded at GAO, the agency may pay the claim for a period of 6 years only from the date of payment, not from the date the agency received the claim. The erroneous payment for the period prior to October 13, 1976, may be considered for waiver under 5 U.S.C. 5584 (1982).

*B-215449 Dec. 26, 1984*

*FOREIGN DIFFERENTIALS AND OVERSEAS ALLOWANCES--POST  
DIFFERENTIALS --COMPUTATION*

An employee of the Air Force qualified for payment of post differential while on extended detail in Saudi Arabia. Since post differential is based on a percentage of basic pay, the post differential payment after acquiring eligibility is computed on the basis of the days entitled to basic pay rather than on the basis of every calendar day.

*B-215686 Dec. 26, 1984*

*COMPENSATION--OVERTIME--COMPENSATORY TIME--OVERTIME v.  
COMPENSATORY TIME*

Claimant, an investigator for the Air Force, was required to be available by telephone so that he could be called back to his duty station if his services were needed. He is not entitled to pre-

mium pay because his residence had not been designated by the agency as his duty station and his duties were not so substantially restricted as to bring him within the purview of 5 U.S.C. 5545(c)(1) as implemented by 5 C.F.R. 550.143. Neither would the employee's standby or on-call status be considered hours of work for payment of overtime under 5 U.S.C. 5542.

*COMPENSATION--PREMIUM PAY--ON ANNUAL BASIS--STANDBY, ETC.  
TIME--TELEPHONE DUTIES, ETC. AT HOME*

Claimant, an investigator for the Air Force whose rate of pay was not in excess of maximum rate of grade GS-10, should have received overtime compensation for call-back overtime work instead of compensatory time off if he did not request the compensatory time off. However, payment may not be made in this case because the claimant has not provided evidence sufficient to establish that overtime was worked for which compensatory time had not been requested.

*B-215796 Dec. 26, 1984*

*TRAVEL EXPENSES--USE OF PERSONAL FUNDS--REIMBURSEMENT*

An employee who pays for travel on official business with more than \$100 of personal cash, contrary to paragraph 1-10.2b of the Federal Travel Regulations may be reimbursed when receipt or other evidence of purchase is provided. Moreover, she may be reimbursed cost of two airline tickets purchased from a travel agent since employee, a new appointee, did not know of the restriction on the use of travel agents for purchasing transportation. Further, in view of the circumstances of this case we would not object to approval of a cash payment, if necessary, so that reimbursement would not be limited by a special government fare.

*B-215911 Dec. 26, 1984*

*TRAVEL EXPENSES--AUTHORIZATION--LACKING*

An employee received a permanent change-of-station transfer and made an advance house-hunting trip

which was not authorized or approved by his agency. On reclaim, he asserts entitlement on the basis that it was cost beneficial to the government and that determinations of this type may be deferred until after transfer. Under the Federal Travel Regulations, para. 2-4.3(c), prior authorization for a house-hunting trip is required. In the absence of written authorization, prior verbal or other informal approval by competent authority, or administrative error, an employee may not be reimbursed such expenses. Even though the trip allegedly resulted in reduced government costs, the employee may not be reimbursed those expenses.

An employee was transferred to a new duty station but was not authorized an advance house-hunting trip, which was consistent with then-existing agency policy. He claims reimbursement for the trip he performed on the grounds that a second employee was authorized a house-hunting trip under similar circumstances. The second employee was authorized a house-hunting trip under a revised agency policy which permitted advance house-hunting trips, and that does not provide a basis to reimburse the first employee.

*B-214966 Dec. 27, 1984*

*SUBSISTENCE--PER DIEM--TEMPORARY DUTY--AT PERMANENT POST*

This Office is presented with a request to determine whether an employee who performed temporary duty at his newly designated permanent duty station between the time he was notified of his transfer and the effective date of that transfer may receive reimbursement of per diem and travel expenses. We are remanding the case to the employee's agency to make a determination in accordance with clarified rules governing these situations. To the extent Thomas S. Roseburg, B-188093, October 18, 1977, differs as to the significance of the nature of an employee's duties, it will no longer be followed. Modifies B-188073, Oct. 18, 1977.

B-215450 Dec. 27, 1984

*OFFICERS AND EMPLOYEES--TRANSFERS--TEMPORARY QUARTERS--  
EVIDENCE OF EXPENSES*

An employee transferred on a permanent change of station, claims entitlement to lodging and subsistence expense reimbursement while occupying temporary quarters at his new duty station, which were provided by a relative. The claims was administratively disallowed on the basis of insufficient information to establish the reasonableness of the claimed expenses. The claim is denied, but on other grounds. While reasonableness of expenses is always in issue, under Federal Travel Regulations, para. 2-5.4(b), proof that the expenses were incurred is also required. Where a receipt given by a commercial establishment for lodging establishes both payment and reasonableness, a statement from a relative regarding the value of similar lodging does not. Since reimbursement is based on the incurrence of expenses which an employee is required to pay, unless proof of payment is submitted, the issue of reasonableness will not be considered.

PERSONNEL LAW: MILITARY PERSONNEL

B-215512 Dec. 3, 1984

PAY--ACTIVE DUTY--HOSPITALIZATION, MEDICAL TREATMENT ETC.--  
AFTER RELEASE FROM DUTY--RESERVISTS

National Guard members are entitled by law to pay and allowances and other benefits when called to active duty and disabled by injury "while so employed." They are ineligible for these benefits, however, based on injuries sustained when engaged in civilian pursuits and when no longer "employed" in a military capacity following their release from military control on the last day of an active duty period. Hence, an Air National Guard sergeant may not be allowed pay and allowances for an injury he sustained while engaged in private civilian employment subsequent to his release from military duty and control earlier the same day, notwithstanding that he was in a "standby" status subject to a possible recall to duty during the remainder of that day.

B-215736 Dec. 3, 1984

TRAVEL EXPENSES--AIR TRAVEL--MEALS--AT AIRPORT--REIMBURSEMENT

A member of the Navy, authorized actual expenses while in a travel status, may be reimbursed for meals taken at normal meal times en route to and from the airport servicing his permanent duty station, where the airport is a considerable distance from his station and he is scheduled to travel on non-meal flights. Distinguishes B-189622, Mar. 24, 1978.

B-215123 Dec. 4, 1984

TRANSPORTATION--AUTOMOBILES--MILITARY PERSONNEL--AUTHORITY--  
UNIFORMED SERVICES PAY ACT OF 1981

A provision of the Uniformed Services Pay Act of 1981 authorized a new travel allowance for service members transferred overseas to reimburse them for the expenses of taking their automobiles to and from

ports of shipment. The Congress did not intend that this provision be interpreted to allow reimbursement for trips taken over unnecessarily circuitous routes to and from ports selected for personal convenience, for example to accommodate travel to a desired leave location. Hence, a transferred Navy petty officer who was ordered to proceed from California to Charleston, South Carolina, to board a military flight to a new duty station in Panama, and who could have delivered his automobile to the port in Charleston for overseas shipment, may not be allowed additional travel allowances predicated on his election to take leave en route in Massachusetts and to deliver his automobile instead to a port in New Jersey.

*B-215448 Dec. 4, 1984*

*TRANSPORTATION--HOUSEHOLD EFFECTS--MILITARY PERSONNEL--  
"DO IT YOURSELF" MOVEMENT--WEIGHT EVIDENCE*

To support a claim for a do-it-yourself household goods move incentive payment, an Air Force member presented two household goods weight certificates showing combined weight exceeding his maximum weight allowance of 8,500 pounds. One ticket for 6,700 pounds reflected weight in a truck rented by the Government, and may be allowed. The other, for 4,730 pounds, reflected combined weight in a station wagon and towed trailer. Since regulations do not permit do-it-yourself reimbursement based on transportation of household goods in a station wagon, that weight could not be considered; nor could the weight in the trailer be considered since there was no certificate showing its weight separately.

*B-216027 Dec. 26, 1984*

*QUARTERS ALLOWANCE--BASIC ALLOWANCE FOR QUARTERS (BAQ)--  
ASSIGNED TO GOVERNMENT QUARTERS--OCCUPANCY EFFECT ON  
ALLOWANCE ENTITLEMENT*

A Navy member, detached from his permanent station, with orders to report directly to a patrol squadron deployed (temporary additional duty) ashore overseas,

without first reporting to the unit's permanent station in California, is assigned Government quarters at the squadron's deployed site. He is not entitled to basic allowance for quarters, since 37 U.S.C. 403(f) precludes entitlement to basic allowance for quarters when a member performing temporary duty incident to a permanent change of station occupies Government quarters.

*B-215683 Dec. 27, 1984*

*CLAIMS--EVIDENCE TO SUPPORT--SUFFICIENCY*

Verbal travel orders were issued to an Army reservist for active duty training in a marksmanship program. Written orders, published 1 year after performance of travel, purporting to confirm verbal orders, cannot support claims for reimbursement of travel expenses, in the absence of an adequate explanation for the 1-year delay in publication. A mere statement provided 3 years later that the delay was the result of intercommand technical difficulties does not satisfy the explanation requirement.

*TRAVEL EXPENSES--MILITARY PERSONNEL--AUTHORIZATION--RETROACTIVE*

Army reservist performed travel for period of active duty training and received travel allowance based on timely written orders determined later by the Inspector General to be invalid. However, the Inspector General also determined that the member performed the duties in good faith and should be paid. Corrected written orders, later published by direction of the Inspector General, to reflect the true intention to authorize travel, retroactively, are proper basis for payment.

PROCUREMENT LAW

B-214314 Dec. 3, 1984 84-2 CPD 595  
CONTRACTS--NEGOTIATION--AWARDS--TO OTHER THAN LOW OFFEROR

Award based on a higher cost, higher technically rated proposal is not objectionable where the contracting officer reasonably determines that the technical difference is significant and the solicitation stated that cost was secondary to technical considerations.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION WITH ALL OFFERORS REQUIREMENT--WHAT CONSTITUTES DISCUSSION--REVISION OF PROPOSAL OPPORTUNITY

Discussions were adequate where the agency asked questions of the protester relating to perceived staffing weaknesses in its proposal and offered the protester an opportunity to improve the proposal.

B-214409.3 Dec. 3, 1984 84-2 CPD 596  
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--RECONSIDERATION REQUESTS--TIMELINESS

GAO will not modify decision declining to recommend corrective action regarding the improper award of a lease for automatic data processing equipment where protester delayed filing protest until more than 4 months after award--the untimely protest was considered pursuant to the "significant-issue" exception to GAO's timeliness rules--and a substantial period of the lease has been performed.

B-214751.2 Dec. 3, 1984 84-2 CPD 597  
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--FAILURE TO SOLICIT

A protester's speculation that the agency may have sought to prevent it from competing by misclassifying a procurement notice and not mailing it a solicitation is not sufficient where the only evi-

dence in the record shows that the misclassification was inadvertent and that the agency actually mailed the protester a copy of the solicitation but at the wrong address.

*CONTRACTS--PROTESTS--ALLEGATIONS--SPECULATIVE*

GAO will not conduct an investigation in connection with its bid protest function in order to determine the validity of a protester's speculation that an agency acted improperly.

*CONTRACTS--SMALL BUSINESS CONCERNS--NOTIFICATION OF SOLICITATION--COMMERCE BUSINESS DAILY ADVERTISEMENT*

The misclassification of a procurement notice in the Commerce Business Daily, and thus the failure to publish a proper notice required under Public Law No. 98-72, does not warrant resolicitation of the requirement where the agency: (1) acted within the spirit of the statute by attempting to publish a proper notice; (2) satisfied the overriding purpose of the statute by attempting to generate small business competition; (3) made award at a reasonable price; and (4) is not shown to have purposely precluded the protester from competing.

*B-215122 Dec. 3, 1985 84-2 CPD 599*

*BIDS--RESPONSIVENESS--SOLICITATION REQUIREMENTS NOT SATISFIED--CONFORMABILITY OF EQUIPMENT, ETC. OFFERED*

Bid offering alternate products was properly rejected as nonresponsive where solicitation stated that alternate bids would not be considered.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO PROTESTER*

Protest issue first raised in comments on agency report is untimely when protester knew or should have known basis for protest almost 5 months before filing.

*B-215122 Dec. 3, 1984 84-2 CPD 599 - Con.  
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT  
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest concerning alleged improprieties in solicitation filed after bid opening is untimely under 4 C.F.R. 21.2(b)(1) and will not be considered.

*B-215214 Dec. 3, 1984 84-2 CPD 600  
BIDS--COMPETITIVE SYSTEM--ADEQUACY OF COMPETITION--ONE BID  
ADEQUATE*

Adequate competition was achieved, even though only one responsive bid was received, where it has not been shown that the bid price was unreasonable.

*BIDS--COMPETITIVE SYSTEM--PRESERVATION OF SYSTEM'S INTEGRITY--  
PECUNIARY DISADVANTAGE TO GOVERNMENT*

Although the rejection of protester's bid results in additional cost to the government, maintenance of the integrity of the competitive system is more in the government's interest than the pecuniary advantage to be gained by acceptance of the protester's lower nonresponsive bid.

*CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER*

Where speculative statements of protester are the only evidence submitted to rebut agency's version of its oral explanation given to protester of manner of bidding, protester has not met burden of proving agency advised it to bid as it did.

*B-215427 Dec. 3, 1985 84-2 CPD 601  
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--  
CONFORMABILITY OF EQUIPMENT, ETC. OFFERED--PERFORMANCE  
SPECIFICATIONS*

GAO will deny a protest alleging that only one manufacturer can meet specifications for snow removal units when the record shows that more than one manu-

facturer can meet the specifications, which are performance and design-type and require a standard commercial product, rather than a particular brand of equipment.

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--  
SPECIFICATIONS--RESTRICTIVE--UNDUE RESTRICTION NOT ESTABLISHED*

Agency's specifications for multi-purpose snow removal units are not unduly restrictive of competition where the agency presents a reasonable explanation as to why such units are necessary to meet its minimum needs and the protester fails to show that the restrictions are unreasonable.

*B-215631 Dec. 3, 1984 84-2 CPD 602*

*CONTRACTS--LABOR STIPULATIONS--SERVICE CONTRACT ACT OF 1965--  
WAGE AND FRINGE BENEFITS OF INCUMBENT CONTRACTOR'S EMPLOYEES--  
UNION AGREEMENT EFFECT*

Incumbent contractor was not prejudiced by inconsistencies between the Department of Labor wage determination in the solicitations and the collective bargaining agreement, since all bidders were on notice that the wage determination specified only minimum wages and benefits and the awardee would be required to comply with the collective bargaining agreement.

*GENERAL ACCOUNTING OFFICE--JURISDICTION--LABOR  
STIPULATIONS--WAGE DETERMINATIONS*

GAO does not review the accuracy of wage rate determinations issued by the Department of Labor in connection with solicitations subject to the Service Contract Act.

*B-215662.4 Dec. 3, 1984 84-2 CPD 603*

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--CANCELLATION--  
MINIMUM NEEDS ERRONEOUSLY STATED*

Agency's decision to cancel RFP was proper where agency determined that the specifications in the RFP overstated its minimum needs.

*B-215662.4 Dec. 3, 1984 84-2 CPD 603 - Con.  
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--  
FUTURE PROCUREMENTS*

GAO will not consider a protest against the specifications of a future procurement.

*B-215705 Dec. 3, 1984 84-2 CPD 604  
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY  
DETERMINATION--NONRESPONSIBILITY FINDING--FAILURE TO REFER  
TO SBA*

GSA acted unreasonably in failing to refer to SBA for certificate of competency its rejection of small business low bidder, who submitted a bid responsive on its face, but which GSA erroneously rejected as nonresponsive, because GSA did not believe bidder would comply with specification--a matter of bidder responsibility, not responsiveness. However, termination of contract is not recommended because it has been substantially performed.

*B-215714 Dec. 3, 1984 84-2 CPD 605  
BIDS--LATE--MODIFICATION--REJECTION*

Where only documentary evidence as to time of receipt of bid modification at government installation shows it was received after bid opening, modification was properly rejected as late.

*CONTRACTS--AWARDS--PROTEST PENDING*

Award of a contract while a protest is pending is permissible under Federal Acquisition Regulation, 14.407-8(b)-(4).

*B-215784 Dec. 3, 1984 84-2 CPD 606  
BIDDERS--DEBARMENT--CONTRACT AWARD ELIGIBILITY--DEBARMENT  
REMOVED--PRIOR TO AWARD*

Award may be made to a firm that is affiliated with a contractor suspended at the time of bid opening, and partly owned by an individual suspended at the time of bid opening, since the suspensions were terminated prior to award.

*B-215853 Dec. 3, 1985 84-2 CPD 607*  
*BIDS--INVITATION FOR BIDS--SPECIFICATIONS--ADEQUACY--SCOPE*  
*OF WORK--SUFFICIENCY OF DETAIL*

Where invitation for bids for security guard services adequately explains agency needs and performance requirements, fact that agency has not detailed the number of supervisors and guard posts; the degree of supervision required of the project manager; and the manhours of coverage for posts does not render specifications inadequate for competition.

*B-215891 Dec. 3, 1984 84-2 CPD 608*  
*NAVAL PETROLEUM RESERVES PRODUCTION ACT--NATURAL GAS SALES--*  
*ADMINISTRATIVE DISCRETION*

By statute, the Secretary of the Department of Energy (DOE) is authorized to conduct sales of Naval Petroleum Reserve petroleum products; each sale shall be a public advertised sale to the highest qualified bidder at such time and in such amounts as the Secretary considers proper. Thus, DOE has some discretion concerning the conduct of the sale, including the decision as to the amount of gas to sell at a particular sale.

Department of Energy did not abuse discretion granted by law in conduct of petroleum sales at Naval Petroleum Reserve in its determination that it could not take immediate remedial action concerning a protest against accuracy of sales information under natural gas sales solicitation filed 4 days before bid opening. Immediate agency action was not possible because solicitation did not permit increasing quantities without amendment, and amendment could not be issued in timely fashion because agency needed time to verify accuracy of protester's information, and sale could not be delayed without adversely affecting the operations of the Naval Petroleum Reserve.

*B-215902 Dec. 3, 1985 84-2 CPD 609*  
*BIDS--RESPONSIVENESS--CONCEPT--NOT APPLICABLE TO NEGOTIATED*  
*PROCUREMENTS*

The legal issue of alleged bid qualification relates to formally advertised procurements, and thus is wholly

inapplicable regarding procurements conducted through competitive negotiation.

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--MADE ONLY WITH RESPECT TO PROSPECTIVE CONTRACTORS*

Determinations of responsibility are made only with respect to prospective contractors, not to offerors who have failed to win the competition.

*CONTRACTS--NEGOTIATION--AWARDS--TO OTHER THAN LOW OFFEROR*

In negotiated procurements, the contract award need not be made to the low offeror unless the solicitation so specifies.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--GENERAL ACCOUNTING OFFICE REVIEW*

In reviewing protests against allegedly improper evaluations, GAO will not substitute its judgment for that of the contracting activity's evaluators, who have wide discretion, but rather will examine the record to determine whether the evaluators' judgments were reasonable and in accord with listed criteria, and whether there were any violations of procurement statutes and regulations.

*B-215967.2 Dec. 3, 1984 84-2 CPD 610*

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT*

Subsequent protest to the General Accounting Office of a protest filed initially with the contracting agency is untimely where it was filed with the GAO more than 1 month after the agency mailed its denial of the initial protest to the protester.

*B-216070 Dec. 3, 1984 84-2 CPD 611*

*CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--PROTESTER NOT IN LINE FOR AWARD*

Protest by a firm not in line for the award if the protest were to be sustained is dismissed, since the protester

does not have the requisite direct and substantial interest in the contract award to be considered an "interested party" under GAO's Bid Protest Procedures.

*B-216747.2 Dec. 3, 1984 84-2 CPD 612*

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--DEFINITIVE  
RESPONSIBILITY CRITERIA--WHAT CONSTITUTES*

Solicitation provision which states that offerors may be required to prove experience in comparable work is conditional and not sufficiently specific and objective to be considered a definitive responsibility criterion.

*B-214652 Dec. 4, 1984 84-2 CPD 616*

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--  
MINIMUM NEEDS--ADMINISTRATIVE DETERMINATION*

Protest that agency should have met its needs by converting protester's software system, which is being provided to the agency under a current contract, rather than by competitively procuring a commercially available, off-the-shelf system, is denied where agency performed requirements analysis and conversion study showing that competitive procurement would be less expensive, would provide faster delivery time, and would obtain less risky product.

*B-215777 Dec. 4, 1984*

*BIDDERS--DEBARMENT--LABOR STIPULATION VIOLATIONS--DAVIS-BACON  
ACT--WAGE UNDERPAYMENTS--DEBARMENT REQUIRED*

Firm which disregarded obligations to employees by wage underpayments which were hidden by falsified certified payrolls has failed to exercise good faith and, therefore, is debarred.

*B-216081 Dec. 4, 1984 84-2 CPD 618*

*BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MANUFACTURER OF  
SIMILAR EQUIPMENT IN CURRENT OPERATION REQUIREMENT--COMPLIANCE  
DETERMINATION*

Slight modifications to existing products do not violate an IFB provision limiting offers to the manufacturer's current standard model.

*B-216081 Dec. 4, 1984 84-2 CPD 618 - Con.  
BIDS--MISTAKES--CORRECTION--AFTER BID OPENING--RULE*

A nonresponsive bid may not be amended after bid opening in order to make it responsive.

*BIDS--RESPONSIVENESS--BRAND NAME OR EQUAL PROCUREMENT*

In brand name or equal solicitations, a bid offering an allegedly "equal" product must contain sufficient descriptive material to permit the contracting activity to assess whether the offered alternative possesses each salient characteristic of the brand name product set forth in the solicitation.

*BIDS--RESPONSIVENESS--DESCRIPTIVE LITERATURE--ADEQUACY*

Generally, if descriptive literature accompanying a bid does not show compliance with the specifications set forth in a proper descriptive literature requirement, the bid must be rejected as nonresponsive. However, descriptive literature does not have to show compliance with specifications beyond those clearly set forth.

*CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR RESOLUTION BY GAO*

Whether a contractor will in fact deliver a conforming product, and the appropriate action to be taken if it does not, are matters of contract administration for resolution by the contracting agency, not this Office.

*B-216309 Dec. 4, 1984 84-2 CPD 619  
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--CANCELLATION--UNAVAILABILITY OF FUNDS*

Agency properly canceled solicitation after bid opening where it determines that sufficient funds are not available to make award.

*B-216315.2 Dec. 4, 1984 84-2 CPD 620  
OFFICE OF MANAGEMENT AND BUDGET--CIRCULARS--NO. A-76--EXHAUSTION OF ADMINISTRATIVE REMEDIES*

GAO will affirm dismissal of protest against propriety of cost comparison performed pursuant to OMB Circular A-76

when solicitation contained provision setting forth administrative review procedure that protester did not exhaust.

*B-216380 Dec. 4, 1984 84-2 CPD*

*CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--DIRECT INTEREST CRITERION*

Protester is not an "interested party" under GAO Bid Protest Procedures to protest that another bidder other than the awardee should have been awarded two contracts since it has no direct economic interest in the outcome of the protest.

*B-216384 Dec. 4, 1984*

*CONTRACTS--GRANT-FUNDED PROCUREMENTS--GENERAL ACCOUNTING OFFICE REVIEW--SIGNIFICANT FEDERAL FUNDS REQUIREMENT*

GAO generally will review grant complaints unless the federal funds in the project as a whole are insignificant.

*CONTRACTS--GRANT-FUNDED PROCUREMENTS--COURT ACTION--COMPLAINT, ETC. DISMISSED*

Federal grant complaint is dismissed when the issue in the complaint is pending before a court of competent jurisdiction unless the court expresses an interest in obtaining the views of GAO.

*CRIMINAL LAW VIOLATIONS--JURISDICTION--GENERAL ACCOUNTING OFFICE v. ATTORNEY GENERAL*

Assertions which are of a criminal nature should be referred by protester to the Department of Justice.

*B-216504 Dec. 4, 1984 84-2 CPD 621*

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--AFFIRMATIVE FINDING ACCEPTED*

GAO does not review affirmative determinations of responsibility except in limited circumstances, not present here.

*B-216504 Dec. 4, 1984 84-2 CPD 621 - Con.*  
*CONTRACTS--NEGOTIATION--AWARDS--TO OTHER THAN LOW OFFEROR*

In a negotiated procurement, award need not to be made to the low offeror unless the RFP so specifies. In the absence of such a provision, award to the low, but technically inferior, offeror is not required.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION WITH ALL OFFERORS REQUIREMENT--WHAT CONSTITUTES DISCUSSION--REVISION OF PROPOSAL OPPORTUNITY*

Meaningful discussions have been held where the agency has indentified those areas in a proposal which are deficient, and has afforded the offeror an opportunity to correct those deficiencies in a revised proposal. The offeror bears the burden to revise its proposal to accommodate the agency's expressed concerns.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--GENERAL ACCOUNTING OFFICE REVIEW*

In reviewing protests against allegedly improper evaluations, GAO will not substitute its judgment for that of the contracting agency's evaluators, who have wide discretion, but rather will examine the record to determine whether the evaluators' judgments were reasonable and in accord with listed criteria, and whether there were any violations of procurement statutes and regulations.

*B-216587.2 Dec. 4, 1984 84-2 CPD 622*  
*GENERAL ACCOUNTING OFFICE--JURISDICTION--COOPERATIVE AGREEMENTS--AWARDS*

Prior decision in which GAO declined to consider complaint of unsuccessful applicant for cooperative agreements is affirmed where applicant has not shown that grantor agency improperly used cooperative agreements instead of contracts to avoid the competitive requirements of procurement laws or that a conflict of interest exists.

B-216671.2 Dec. 4, 1984 84-2 CPD 623

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT  
ESTABLISHED

GAO will deny a request for reconsideration where no new facts or legal arguments are raised which show that a prior decision was erroneous.

B-216685.2 Dec. 4, 1984 84-2 CPD 624

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT  
ESTABLISHED

Request for reconsideration of decision holding that protester has stated no basis of protest is denied where protester has not shown that prior decision is erroneous.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO  
PROTESTER

Protest not filed within 10 working days of the date the basis for protest was known is untimely.

B-217118 Dec. 4, 1984 84-2 CPD 625

CONTRACTS--PROTESTS--ALLEGATIONS--SPECULATIVE

Protest against proposal evaluation is dismissed as premature where agency is still evaluating proposals it received in response to the solicitation and no award decision has been reached.

B-215827 Dec. 5, 1985 85-2 CPD 626

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--  
NONRESPONSIBILITY FINDING

GAO finds reasonable basis for contracting officer's non-responsibility determination where protester is a newly formed business, with no prior performance record and minimal working capital.

*B-215958 Dec. 5, 1984 84-2 CPD 627*  
*TRANSPORTATION--RATES--EXCLUSIVE USE OF VEHICLE--EVIDENCE--*  
*MOVEMENT UNDER SEAL*

Relevant tariff provision provides that exclusive use of service charges are applicable where the shipper or the carrier, by instructions of the shipper, applies a numbered seal to vehicle and the seal number is noted on bill of lading. Since the record shows that these requirements were met, carrier is entitled to payment for exclusive use of service.

*B-216549 Dec. 5, 1984 84-2 CPD 628*  
*CLAIMS--PRIORITY--TAX v. COMPETING CLAIMS*

Tax levy has priority over claim of payment bond surety and trustee in bankruptcy established after tax levy.

*CONTRACTS--LABOR STIPULATIONS--WAGE UNDERPAYMENTS--CLAIM*  
*PRIORITY--UNDERPAID WORKERS v. COMPETING CLAIMS*

Amount withheld from contractor for labor standards violations and for liquidated damages assessed as a result of Contract Work Hours and Safety Standards Act violations has first priority.

*CONTRACTS--PAYMENTS--ASSIGNMENT--SET-OFF--"NO SET-OFF"*  
*CLAUSE*

In order for a lending institution to achieve the status of an assignee under the Assignment of Claims Act, it has to be shown that the monies that the institution advanced to the contractor were actually used in, or at least made available for the performance of the contract.

*B-216807 Dec. 5, 1984 84-2 CPD 629*  
*CONTRACTS--PROTESTS--ABEYANCE PENDING COURT ACTION*

Protests against rejection of bid on basis of material unbalancing will not be considered where material issues are before a court of competent jurisdiction and where the court has not expressed interest in receiving views of GAO.

*B-217058 Dec. 5, 1984 84-2 CPD 630*  
*CONTRACTS--SMALL BUSINESS CONCERNS--SIZE STANDARDS--*  
*ERRONEOUS IN SOLICITATION--DECISION ON APPEAL AFTER BID*  
*OPENING--PROSPECTIVE APPLICATION ONLY*

A Small Business Administration Office of Hearings and Appeals ruling that a solicitation contained an incorrect small business size standard, which is received by the procuring agency after bid opening, has prospective effect only and there is no requirement that the solicitation be canceled.

*B-217166 Dec. 5, 1984 84-2 CPD 631*  
*CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR*  
*RESOLUTION BY GAO*

Contractor's protest that it is being required by state authorities to pay for its employees' physical examinations is not for consideration under the GAO Bid Protest Procedures, which are reserved for considering the legality of a contract award.

*B-214324 Dec. 6, 1984 84-2 CPD 632*  
*CONTRACTS--PROTESTS--ALLEGATIONS--NOT PREJUDICIAL*

Protester's contention that it was unfairly prejudiced in a procurement for a lease contract by an undisclosed change in the agency's estimate of the cost of government-provided utilities is denied where it appears that the change had only a slight effect on the price evaluation and, given the awardee's considerable technical advantage, did not affect significantly the overall relative standing of the proposals.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--*  
*TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN*  
*TO PROTESTER*

An independent protest allegation based on material sent to the protester after it filed its initial protest is untimely where the issue is first raised more than 1 month after the protester received the material.

*B-214324 Dec. 6, 1984 84-2 CPD 632 - Con.  
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT  
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Where a solicitation provided, in effect, that offerors' energy consumption estimates would be accepted for purposes of price comparison without any realism analysis, a post-closing date protest contending that the agency should have questioned the awardee's estimates is actually an untimely protest concerning an alleged solicitation impropriety.

*B-215836, B-215836.3 Dec. 6, 1984 84-2 CPD 633  
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS  
REQUIREMENT--ADMINISTRATIVE DETERMINATION--REASONABLENESS*

Agency's specifications for boiler equipment are not unduly restrictive of competition where the agency presents a reasonable explanation of why the restrictions are necessary to meet its minimum needs, and the protester fails to address the explanation or show that the specifications do not represent the agency's legitimate actual needs.

*B-216469 Dec. 6, 1984 84-2 CPD 634  
BIDS--ACCEPTANCE TIME LIMITATION--BIDS OFFERING DIFFERENT  
ACCEPTANCE PERIODS--SHORTER PERIODS--REJECTION OF BID*

Agency properly rejected as nonresponsive a bid offering a 60-day bid acceptance period rather than the 90-day minimum period required by the solicitation.

*B-216501.2 Dec. 6, 1984 84-2 CPD 635  
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--SIGNIFICANT ISSUE EXCEPTION--NOT  
FOR APPLICATION*

Untimely protest will not be considered under significant issue exception to our timeliness rules because issue is one that we have previously considered.

*B-216678 Dec. 6, 1984 84-2 CPD 636  
CONTRACTS--PROTESTS--ISSUES IN LITIGATION*

Protest is dismissed where the material issues are before a court of competent jurisdiction, judicial relief pending

a decision by this Office has not been requested, and the court has not expressed interest in GAO decision.

*B-215723 Dec. 7, 1984 84-2 CPD 639*

*BIDS--GUARANTEES--BID GUARANTEES--NONCOMPLIANCE--BID  
NONRESPONSIVENESS*

Agency properly rejected as nonresponsive a bid with bid guarantee \$26,189.67 less than required amount since deficiency is not de minimus nor does it fall within any of the regulatory exceptions provided for acceptance of otherwise deficient bid guarantees.

When required, a bid guarantee is a material part of a bid. Therefore, when an adequate bid guarantee is not furnished with the bid, the bid is nonresponsive and cannot be made responsive by submitting additional documents after bid opening nor by reference to past performance or specific cost savings to the government.

*B-216331 Dec. 7, 1984 84-2 CPD 640*

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--  
CANCELLATION--NOT JUSTIFIED*

Decision to cancel solicitation for residential treatment services lacks a sound basis where justification for cancellation is based upon agency's determination that an additional residential treatment facility is not needed in the area yet record reflects that agency has issued a new solicitation for the same services.

*B-215308.5 Dec. 10, 1984 84-2 CPD 641*

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--  
COMPETITIVE RANGE EXCLUSION--REASONABLENESS*

In camera review of prices offered in response to request for proposals does not reveal abuse of discretion in excluding proposal from competitive range based on price.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT*

Protest that agency improperly excluded a proposal from the competitive range without conducting dis-

cussions is dismissed as untimely because it was not filed within 10 days of when the protester received notice that its proposal had been rejected.

*CONTRACTS--PROTESTS--PROTESTS AND DEBRIEFING PROCEDURES*

Issues involving the scheduling of a debriefing ordinarily will not be considered by GAO since such issues are procedural and do not involve the validity of a contract award.

*B-215589.2 Dec. 10, 1984 84-2 CPD 642*

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED*

Prior decision is affirmed where protester does not demonstrate that our conclusion that a federal agency had a reasonable basis to issue a brand name only solicitation for computer equipment is legally incorrect. 39 Comp. Gen. 101 (1959), B-182202, December 13, 1974, distinguished.

*B-215613.2 Dec. 10, 1984 84-2 CPD 643*

*CONTRACTING OFFICERS--AUTHORITY--CONTRACT AWARDS*

Point scores are only guides for decisionmaking and contracting officer is not bound by them. Contracting officer reasonably relied upon agency's technical experts' reevaluation of two top numerically rated proposals and determination that awardee's higher priced/technically superior proposal best met the agency's needs.

*CONTRACTS--NEGOTIATION--AWARDS--TO OTHER THAN LOW OFFEROR*

Award of a contract for prison medical services to higher cost technically superior proposal is not objectionable where award on that basis is consistent with the RFP's evaluation criteria and the procuring activity reasonably determined that the higher cost was justified by the awardee's comprehensive and innovative prison health services program.

*B-215613.2 Dec. 10, 1984 84-2 CPD 643 - Con.  
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION  
WITH ALL OFFERORS REQUIREMENT--FAILURE TO DISCUSS--  
SITUATIONS NOT REQUIRING DISCUSSION*

Where an offeror's proposed staffing proposal is considered acceptable, the agency was not required to discuss this subject with the offeror during competitive range discussions nor was it required to do so when procuring officials decided that they preferred another offeror's proposal providing for more staff hours for certain health professionals' services.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT  
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

A protest based upon alleged improprieties in request for proposals filed after the closing date for receipt of proposals is untimely.

*B-215900 Dec. 10, 1984 84-2 CPD 644  
BIDS--INVITATION FOR BIDS--AMENDMENTS--MATERIAL TO CONTRACT*

Amendment to an IFB expressly deleted a provision in the Instructions and Notices to Bidders warning that bids exceeding the stated cost limitation would be rejected. However, because the amendment did not delete an identical provision in the Bidding Schedule or prominent references to the cost limitation in other sections of the IFB--the agency asserts that the single provision was deleted as redundant--the cost limitation still applies, so that a bid which exceeds the limitation is ineligible for award.

*B-215999 Dec. 10, 1984 84-2 CPD 645  
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--AMENDMENT--  
PROPRIETY*

Where under federal regulation two small business size standards stated in a request for proposals cannot both be applicable to the standard industrial classification designated for the procurement, the contracting

officer is not estopped from amending the RFP after receipt of proposals to clarify which size standard is applicable, even though the contract negotiator earlier told offeror the size standard was correct. B-210139, May 20, 1983, B-207136, Aug. 26, 1982, distinguished.

*B-216754 Dec. 10, 1984 84-2 CPD 646  
CONTRACTS--DISCOUNTS--PAYMENT DATE DETERMINATION*

Where a contractual provision specifies that payment is considered to be made for purpose of earning a prompt payment discount on the date of the mailing of the government check, the general rule, that payment must be received by a vendor on or before the delinquency date, does not apply.

*B-215724 Dec. 11, 1984 84-2 CPD 647  
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--  
NONRESPONSIBILITY FINDING*

A grantee's determination that a proposed equipment supplier is nonresponsible is unobjectionable where it was based on past problems with the equipment, the supplier's failure to furnish the names of two installations using its equipment (as required by the solicitation), and inadequate quality control, and the protesting supplier has not established that the grantee's determination was unreasonable.

*CONTRACTS--PROTESTS--ALLEGATIONS--BIAS--UNSUBSTANTIATED*

An assertion of bias and collusion on the part of a grantee will not be considered where not supported by substantive evidence.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT  
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

An allegation that a solicitation requirement was unnecessary is untimely and will not be considered by GAO where not raised prior to bid opening.

B-216176 Dec. 11, 1984 84-2 CPD 648  
BIDDERS--QUALIFICATIONS--CERTIFICATIONS--GENERAL v.  
SPECIFIC--RESPONSIVENESS v. RESPONSIBILITY

Question regarding bidder's status as small business under total small business set-aside for construction services is not matter of bid responsiveness since question does not relate to bidder's commitment or obligation to provide required services in conformance with material terms of solicitation, but rather to bidder's status and eligibility for award. Thus, contracting agency was correct in permitting bidder to correct erroneous certification indicating bidder was large business in order to reflect bidder's actual status as small business.

B-216236 Dec. 11, 1984 84-2 CPD 649  
CONTRACTS--DATA, RIGHTS, ETC.--DISCLOSURE--PRIOR TO AWARD--  
NO EVIDENCE TO SUPPORT ALLEGATION

Where protester contends that contracting agency violated protester's rights to certain proprietary data and designs, protester must bear burden of proving its case by providing clear and convincing evidence to support its claims. Protester has not met burden of proof where record shows that IFB does not contain any proprietary data and pertinent technical data was not provided to contracting agency in confidence nor identified as proprietary when supplied to the agency. Moreover, equipment manufactured by protester to be furnished by agency to awardee under contract is standard commercial item available to public and cannot be considered proprietary in nature.

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--  
PROPRIETARY DATA ISSUES

Protester alleging that contracting agency unlawfully appropriated proprietary data and designs and that contracting agency will improperly furnish equipment manufactured by protester to awardee in violation of protester's rights to proprietary data and designs, even though not a bidder under this procurement, has direct

economic interest in outcome of protest. Therefore, protester is an "interested party" entitled to protest in accord with section 21.1(a) of GAO Bid Protest Procedures.

*GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DISPUTES--  
BETWEEN PRIVATE PARTIES*

Allegation that awardee may use government-furnished equipment made by protester and supplied to agency under different contracts to copy protester's proprietary designs is not for adjudication by GAO. Even if awardee does use government-furnished equipment to copy designs, such matter involves a dispute between private parties concerning patent infringements which are not matters for GAO consideration.

*B-216280 Dec. 11, 1984 84-2 CPD 650  
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--TESTS--FIRST  
ARTICLE--ADMINISTRATIVE DETERMINATION*

The decision whether to waive a first article testing requirement is a matter within the contracting agency's discretion. Contracting officer's decision to waive first article testing will not be disturbed in the absence of a showing that it was arbitrary, capricious, or unreasonable.

*BIDS--INVITATION FOR BIDS--SPECIFICATIONS--TESTS--FIRST  
ARTICLE--WAIVER PROPRIETY*

Waiver of first article testing requirement is not shown to be arbitrary, capricious, or unreasonable where waiver was based upon fact that firm had received first article approval of similar items under previous government contracts.

*B-216367 Dec. 11, 1984 84-2 CPD 651  
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--  
APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest to agency of small business set-aside restriction, which is filed with a proposal submitted

by the protester does not constitute a timely protest to the contracting agency. Therefore, subsequent protest to GAO will not be considered.

*B-216596.3 Dec. 11, 1984 84-2 CPD 652  
CONTRACTS--AWARDS--EFFECTIVE DATE--DELAYED*

An agency's failure to award a contract by its stated target date is purely a matter of procedure which alone does not invalidate the procurement or provide a basis of protest for a firm that did not submit its proposal on time.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED*

Where the only reasonable reading of a protest is as an untimely complaint concerning a solicitation's proposal preparation period, a prior decision dismissing the protest is affirmed when the protester merely argues that the protest should have been read otherwise.

*B-216974 Dec. 11, 1984 84-2 CPD 653  
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY DETERMINATION--NONRESPONSIBILITY FINDING--REVIEW BY GAO*

GAO will not review Small Business Administration (SBA) decision regarding the responsibility of a small business, absent a showing of possible fraud or bad faith on the part of contracting officials. Where protester alleges fraud on the part of contracting officials, but matter is presently before SBA for a certificate of competency decision, GAO will not consider allegation until SBA issues its decision and only if SBA declines to issue a certificate of competency.

*B-217016 Dec. 11, 1984 84-2 CPD 654  
BIDS--UNBALANCED--ESTIMATES--ACCURACY*

Even if low bid contained unbalanced prices for high-volume items as compared with low-

volume items, there is no indication that estimates for items were erroneous; consequently, low bid may be accepted.

*BIDS--UNBALANCED--PROPRIETY OF UNBALANCE--"MATHEMATICALLY UNBALANCED BIDS"--MATERIALITY OF UNBALANCE*

GAO will not consider whether bid is materially unbalanced where bid is found not to be mathematically unbalanced.

*BIDS--UNBALANCED--PROPRIETY OF UNBALANCE--"MATHEMATICALLY UNBALANCED BIDS"--WHAT CONSTITUTES*

Bid for base period's and option periods' services is not mathematically unbalanced on its face where base period's price is only 15 percent higher than option periods' prices; moreover, examination of bidder's post-bid-opening explanation as to why base period price was higher confirms conclusion that bid is not mathematically unbalanced. Bidder would not receive a windfall if options are not exercised.

*GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--COURT-SOLICITED ASSISTANCE--SCOPE OF REVIEW--NO PROTEST PENDING*

GAO furnishes views on court suit where United States District Court for the Northern District of California has requested an opinion. Views are based solely on court record transmitted to GAO.

*B-217117 Dec. 11, 1984 84-2 CPD 655  
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--  
PERFORMANCE--CONTRACT ADMINISTRATION MATTER*

Whether Federal Supply Schedule contractor's products meet specification requirements during performance of contract is a matter of contract administration which GAO will not consider.

*B-217128 Dec. 11, 1984 84-2 CPD 656  
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE FUNCTION--  
SCOPE OF REVIEW OF AGENCY ACTION*

Under GAO's Bid Protest Procedures, GAO considers the propriety of an award or proposed award and not general allegations that agencies have acted improperly in regard to unspecified past and present procurements.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO  
PROTESTER*

Protest filed with GAO more than 2 months after protester knew the bases of the protest is untimely and not for consideration on the merits.

*B-217154 Dec. 11, 1984 84-2 CPD 657  
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT*

Protest filed more than 10 working days after the protester receives denial of earlier protest filed with the contracting agency is untimely and will not be considered on the merits.

*B-215922, & .2 Dec. 12, 1984 84-2 CPD 658  
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--  
AFFIRMATIVE FINDING ACCEPTED*

GAO does not review affirmative determinations of responsibility absent a showing of possible fraud on the part of contracting officials or an allegation that definitive responsibility criteria have been misapplied.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--  
TECHNICAL ACCEPTABILITY--ADMINISTRATIVE DETERMINATION*

Whether a proposal is technically acceptable is within the discretion of the contracting agency to determine and GAO will not disturb an agency's

determination unless it is shown to be unreasonable. Where request for proposals stated that office space offered must be a minimum of 15,500 square feet, the rejection of a proposal offering 15,000 square feet was not unreasonable.

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--AMENDMENT--  
AFTER EVALUATION OF INITIAL PROPOSALS*

Floor plan which was labeled "sample" and which was enclosed with a request for a best and final offer cannot be properly construed to amend material terms of the solicitation.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--NEW ISSUES--UNRELATED TO ORIGINAL  
PROTEST BASIS*

New grounds of protest must independently satisfy the timeliness requirements of GAO's Bid Protest Procedures. Grounds of protest which are raised more than 10 working days after the basis is known are untimely and not for consideration on the merits.

*CONTRACTS--PROTEST--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT  
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest based upon alleged improprieties apparent in a request for proposals must be filed prior to the closing date for receipt of proposals.

*B-216100 Dec. 12, 1984 84-2 CPD 659  
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--  
PROTESTER NOT IN LINE FOR AWARD*

Protest by sixth low bidder against award of contract is dismissed since protester, who would not be in line for award even if its protest were upheld, is not interested party under GAO Bid Protest Procedures.

*B-216767; B-216806 Dec. 12, 1984 84-2 CPD 660  
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--PROTESTER  
NOT IN LINE FOR AWARD*

GAO will not consider a protest when, regardless of the outcome, the protester is not in line for contract award.

*B-217253 Dec. 12, 1984 84-2 CPD 661  
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO  
PROTESTER*

Protest filed with the General Accounting Office more than 6 weeks after the agency mailed its rejection of protester's bid is untimely.

*B-215497 Dec. 13, 1984 84-2 CPD 662  
BIDS--PRICES--REASONABLENESS--ADMINISTRATIVE DETERMINATION*

A determination concerning price reasonableness is a matter of administrative discretion which GAO will not question unless shown to be unreasonable or in bad faith. The mere fact that the contract was awarded to a bidder whose price was more than that offered by a nonresponsive bidder does not establish that the contracting officer improperly found the award price reasonable.

*BIDS--RESPONSIVENESS--EXCEPTIONS TAKEN TO INVITATION TERMS--  
DELIVERY PROVISIONS*

A bid offering delivery based on days after receipt of order must be evaluated by adding five (5) days for delivery through the ordinary mails. If, as so computed, the delivery date offered is later than the date required, the bid is nonresponsive.

*B-216014 Dec. 13, 1984 84-2 CPD 663  
CONTRACTORS--RESPONSIBILITY--DETERMINATION--TIME FOR MAKING  
DETERMINATION*

IFB requirement that bidders prove that they have specific specifications and drawings and show that their products are interchangeable with

existing government-owned equipment relates to the bidders' ability to perform, i.e., responsibility, which may be determined on the basis of information submitted after bid opening, rather than bid responsiveness.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION*

Since the Small Business Administration has conclusive authority to determine a small business responsible, GAO will not review a contracting agency's decision that a small business is nonresponsible.

*B-216453 Dec. 13, 1984 84-2 CPD 664  
BIDS--OPENING--PUBLIC--INFORMATION DISCLOSURE*

Public opening of bids under advertised solicitation does not result in an auction under a prior negotiated solicitation for a cost-plus-award-fee contract which used part of the same performance period for cost comparison purposes, since only some of the services included in the initial solicitation are in the second and the fixed-price bids are of limited use in preparing cost proposals under the initial negotiated solicitation.

*B-217007 Dec. 13, 1984 84-2 CPD 665  
BIDDERS--UNSUCCESSFUL--SUBCONTRACTING*

There is no prohibition against an unsuccessful bidder working as a subcontractor for a successful bidder.

*BIDS--COLLUSIVE BIDDING--ALLEGATIONS UNSUPPORTED BY EVIDENCE*

Allegation of collusion among two low bidders and a bonding company is denied where no evidence is submitted to support allegation. However, if protester has specific information, it should be presented to the contracting officer for possible forwarding to the Department of Justice in accordance with the Federal Acquisition Regulation.

*B-217007 Dec. 13, 1984 84-2 CPD 665 - Con.  
BIDS--PRICES--REDUCTION PROPRIETY*

It is permissible for a bidder to change its bid price prior to bid opening.

*B-215275.2 Dec. 14, 1984  
CONTRACTS--AWARDS--ERRONEOUS--PERFORMANCE--COMPLETED*

GAO affirms conclusion that no remedy was possible under improperly awarded contract where contract had been completed before our decision was issued.

*B-216212 Dec. 14, 1984 84-2 CPD 666  
CONTRACTS--PROTESTS--ABEYANCE PENDING COURT ACTION*

Where a court of competent jurisdiction has denied the protester's motion for a preliminary injunction but has not dismissed the case or requested an advisory opinion from GAO, GAO will not review the matter.

*B-216255 Dec. 14, 1984 84-2 CPD 667  
CONTRACTS--PROTESTS--ALLEGATIONS--SPECULATIVE*

When record contains no documentary evidence supporting protester's allegations, GAO will regard them as speculative. Protester has the burden of diligently pursuing and affirmatively proving its allegations, and when it fails to do so, GAO will deny the protest.

*CONTRACTS--PROTESTS--CONFERENCES--REQUEST DENIED*

When no useful purpose would be served by a conference, GAO will deny a protester's request for one.

*B-217212 Dec. 14, 1984 84-2 CPD 668  
BUY AMERICAN ACT--CONTRACTOR COMPLIANCE WITH CERTIFICATION--  
CONTRACT ADMINISTRATION MATTER*

Where offeror excludes no end products from Buy American certificate in bid and does not otherwise indicate that it is offering anything other

than domestic end products, acceptance of offer results in obligation of offeror to furnish domestic end products. Compliance with obligation is matter of contract administration, which has no effect on the validity of contract award, and is not for consideration under GAO bid protest function.

*B-214111.2 Dec. 17, 1984 84-2 CPD 669  
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
RECONSIDERATION REQUESTS--ISSUES IN LITIGATION*

GAO will deny a request for reconsideration of a protest decision based upon a Memorandum Order of a United States District Court in a different case when the facts of the cases are distinguishable. Further, since the court's order is preliminary, it would not provide a basis for reconsideration.

*B-215131 Dec. 17, 1984 84-2 CPD 670  
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--  
REOPENING NEGOTIATIONS*

Protest challenging contract award is dismissed as academic where award to protester under original solicitation is no longer feasible due to altered requirements and where agency indicates that new solicitation containing the altered requirements will be issued.

*B-215242 Dec. 17, 1984 84-2 CPD 671  
CONTRACTS--COMPETITIVE SYSTEM--COMPETITIVE ADVANTAGE--  
NOT RESULTING FROM UNFAIR GOVERNMENT ACTION*

Protest that the original equipment manufacturer used its position as the designated subcontractor for providing updated engineering drawings to obtain an unfair competitive advantage by charging the protester substantially more than it bid directly for performing that same portion of the work is denied since the protester has not proven that improper action by the government resulted in an unfair competitive advantage.

B-215242 Dec. 17, 1984 84-2 CPD 671 - Con.  
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--TWO-STEP PROCUREMENT--STEP ONE

Protest in two-step advertised procurement alleging that the procuring agency's designation of the original equipment manufacturer as the subcontractor for providing updated engineering drawings gave that firm an unfair competitive advantage and resulted in a conflict of interest is untimely where the Step I solicitation clearly spelled out that requirement and the protester submitted its Step I proposal on that basis, since the alleged deficiency was apparent on the face of the solicitation and the protest was not filed until after Step I proposals were received.

B-215664 Dec. 17, 1984 84-2 CPD 672  
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--  
SPECIFICATIONS--MINIMUM NEEDS--ADMINISTRATIVE DETERMINATION

GAO will not disturb a procuring agency's determination of its needs and the specifications necessary to meet them, or the agency's technical evaluation of proposed equipment, absent a clear showing by the protester that the agency has acted unreasonably.

B-215717 Dec. 17, 1984 84-2 CPD 673  
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--  
PROTESTER NOT IN LINE FOR AWARD

A protester challenging a contract award is not an interested party under GAO Bid Protest Procedures, and its protest thus is dismissed, where it would not be in line for award if its protest were upheld.

B-216268 Dec. 17, 1984 84-2 CPD 674  
BIDS--ACCEPTANCE TIME LIMITATION--FAILURE TO COMPLY--WAIVER--  
ONE BID RECEIVED

Bidder who offered a bid acceptance period shorter than that contemplated in solicitation may not extend that period or revive its expired bid

for items where other bidders offered the requested acceptance period. However, on those items where bidder submitted the only bid, bidder may revive bid since there are no competitors who offered the full acceptance period, and the bidder's behavior was not such that it adversely affected the integrity of the competitive bidding system.

*B-216624 Dec. 17, 1984 84-2 CPD 675  
BIDS--LATE--HAND CARRIED DELAY--REJECTION OF BID*

A late hand-carried bid delivered to the bid opening room after the time set for bid opening may not be considered unless there is a showing that wrongful government action was the paramount cause of the late delivery. 34 Comp. Gen. 150, distinguished.

*B-216635 Dec. 17, 1984 84-2 CPD 676  
CONTRACTS--PROTESTS--CONTRACTS ADMINISTRATION--NOT FOR  
RESOLUTION BY GAO*

A contracting officer's determination that the completion contractor offered by a defaulted firm's surety is not competent and qualified is not reviewable under GAO's Bid Protest Procedures, which are reserved for considering the propriety of contract awards and proposed awards.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS  
ADMINISTRATION'S AUTHORITY--CERTIFICATE OF COMPETENCY--  
PRIME OR SUBCONTRACTOR STATUS DETERMINATION*

SBA properly declined to review, under its certificate of competency program, the contracting officer's rejection of small business subcontractor offered by surety for completion of default terminated contract because the certificate of competency program is reserved for prime contractors only.

*B-216665 Dec. 17, 1984 84-2 CPD 677*  
*CONTRACTS--PROTESTS--CONFLICT IN STATEMENTS OF PROTESTER AND*  
*CONTRACTING AGENCY*

Protester's proposal was properly rejected as late where protester's evidence of timely submission is in conflict with time/date stamp of contracting agency, and protester fails to meet any of the conditions for acceptance of a late proposal under the RFP's late proposal clause.

*B-217086 Dec. 17, 1984 84-2 CPD 678*  
*BIDS--COMPETITIVE SYSTEM--EQUAL BIDDING BASIS FOR ALL*  
*BIDDERS--GOVERNMENT EQUALIZING DIFFERENCES*

Fact that bidder enjoys competitive advantage because its bid price is based on a foreign currency is not an unfair advantage that the government is required to equalize among the bidders.

*B-217249 Dec. 17, 1984 84-2 CPD 679*  
*BIDS--ACCEPTANCE TIME LIMITATION--BIDS OFFERING DIFFERENT*  
*ACCEPTANCE PERIODS--SHORTER PERIODS--REJECTION OF BID*

Bid is properly rejected as nonresponsive where acceptance period offered in bid is shorter than minimum period required in solicitation. Bid may not be corrected and made responsive after bid opening, even where failure to specify minimum acceptance period may have been due to typographical error by bidder.

*B-217308 Dec. 17, 1984 85-1 CPD 72*  
*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS*  
*ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION*

Protest concerning the low bidder's small business size status is a matter for decision by the Small Business Administration and is not for GAO's consideration.

*B-212107.3 Dec. 18, 1984 84-2 CPD 680  
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--  
AFFIRMATIVE FINDING ACCEPTED*

GAO will not question an agency's affirmative determination of a bidder's responsibility in the absence of a showing of possible fraud or bad faith or that the solicitation's definitive responsibility criteria were not met.

*CONTRACTS--PROTESTS--CONTRACT, ADMINISTRATION--NOT FOR  
RESOLUTION BY GAO*

GAO will not review under its protest procedures an agency's modification of a contract in the absence of an allegation either that the agency awarded the contract with the intention of later modifying it or that the modification goes beyond the scope of the original contract.

*GENERAL ACCOUNTING OFFICE--INVESTIGATIONS--PROPRIETY*

GAO does not conduct investigations in connection with its bid protest function for the purpose of establishing the validity of a protester's assertions.

*B-217121 Dec. 18, 1984  
BONDS--PAYMENT--MILLER ACT COVERAGE--SUBCONTRACTORS, ETC.*

The Miller Act requires that before any government construction contract in excess of \$25,000 is awarded, the awardee must furnish a payment bond for the protection of persons or firms furnishing labor and material used in the performance of the contract. The protection of the Miller Act extends only as far as second-tier subcontractors and is the only protection for nonpayment provided by the government for subcontractors.

*B-217190.2 Dec. 18, 1984 84-2 CPD 681  
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS*

Protest is dismissed as premature where it does not concern immediate procurement, but challenges specifications expected to be included in future solicitations.

*B-217190.2 Dec. 18, 1984 84-2 CPD 681 - Con.  
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--AWARD  
MADE TO PROTESTER*

Protest is dismissed as academic where agency has resolved issue in favor of protester.

*B-217233 Dec. 18, 1984 84-2 CPD 682  
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO  
PROTESTER*

Protest to GAO more than 10 days after agency notified protester that its proposal would not be considered is untimely.

*B-215397 Dec. 19, 1984 84-2 CPD 683  
BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO  
ACKNOWLEDGE--BID NONRESPONSIVE*

Low bidder's failure to acknowledge solicitation amendment containing a number of changes, some of which had a material effect on contract performance, may not be waived as a minor informality. The bid therefore was properly rejected as nonresponsive.

*B-216554.2 Dec. 20, 1984  
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--CONGRESSIONAL TRANSMITTAL OF PROTEST*

GAO affirms its refusal to issue a decision on the merits of a protest forwarded by a Member of Congress because the protest is untimely and consideration of it would circumvent the timeliness rules of GAO's Bid Protest Procedures, but advises Member that even if protest were considered on the merits, it would be summarily denied.

*B-216293 Dec. 21, 1984 84-2 CPD 684  
BIDDERS--QUALIFICATIONS--CERTIFICATIONS--FAILURE OF BIDDER  
TO COMPLETE--MINOR INFORMALITIES--WAIVER*

Bid submitted in response to total small business set-aside solicitation, in which bidder fails to certify that bidder would furnish materials manu-

factured or produced by small business, may be accepted where bidder binds itself to specific supplier under place of performance clause and agency has information on file indicating the supplier's status as a small business.

*B-216487 Dec. 21, 1984 84-2 CPD 685  
BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO  
ACKNOWLEDGE--WAIVED AS MINOR INFORMALITY*

A bidder's failure to acknowledge an amendment formally is properly waived as a minor informality when the contracting officer receives the bid with the amendment attached, since acceptance of the bid will bind the firm to the terms of the solicitation, including the amendment, at the bid price.

*B-216489 Dec. 21, 1984 84-2 CPD 686  
BIDS--INVITATION FOR BIDS--DEFECTIVE--EVALUATION CRITERIA*

Award to actual low bidder is proper where there has been no showing that competition was adversely affected by the absence of an explicit statement in the IFB that bidders' monthly rental charges would be extended over the contract term in determining the lowest aggregate bidder.

*CONTRACTS--AWARDS--LOW BIDDER--ENTITLEMENT TO AWARD--AWARD  
ON PRICE AND "OTHER FACTORS CONSIDERED" BASIS*

Protest alleging that award should be made on the basis of unit price without regard to total contract cost is denied since it would result in award to other than the actual low bidder for the entire contract period which is inconsistent with the requirement that award be made on the basis of the most favorable cost to the government.

*B-216298 Dec. 24, 1984 84-2 CPD 688  
CONTRACTS--AWARDS--SEPARABLE OR AGGREGATE--SINGLE AWARD--  
PROPRIETY*

Solicitation did not provide for aggregate award. However, since agency's minimum needs necessitate an aggregate award and all bidders bid on both

items solicited, the protester, who was low on only one of the items, has not been prejudiced by the award based on the low aggregate bid.

*B-216397 Dec. 24, 1984 84-2 CPD 689*

*BONDS--BIDS--DISCREPANCY BETWEEN BID AND BID BOND--BID RESPONSIVE--SAME LEGAL ENTITY*

Bid in trade name of individual, accompanied by bid bond on which principal is another trade name of that individual, is responsive where bid bond correctly identifies solicitation and project and the same individual is identified as owner on both bid and bond.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY DETERMINATION--NONRESPONSIBILITY FINDING--FAILURE TO REFER TO SBA*

Under Federal Acquisition Regulation, procuring agencies are required to refer negative responsibility determinations of small business construction concerns to Small Business Administration for possible certificate of competency, even when determination is based upon past unsatisfactory performance. Agency interpretation that such determination need not be referred to SBA is unreasonable.

*B-216437 Dec. 24, 1984 84-2 CPD 620*

*CONTRACTS--GRANT-FUNDED PROCUREMENTS--PROTEST TIMELINESS*

A complaint concerning the award of a contract under a federal grant filed with GAO 2 months after notification of adverse action by the grantor agency and exhaustion of administrative appeal procedures is not filed within a reasonable time and is dismissed.

*B-217248 Dec. 24, 1984 84-2 CPD 691*

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OR PROTEST--ADVERSE AGENCY ACTION EFFECT*

Protest filed with GAO more than 10 working days after receipt by protester of contracting officer's

denial of its protest to the contracting agency is untimely and not for consideration.

*B-217310 Dec. 24, 1984 84-2 CPD 692  
FREEDOM OF INFORMATION ACT--GENERAL ACCOUNTING OFFICE  
AUTHORITY*

GAO has no authority to determine what information must be released by an agency under the Freedom of Information Act.

*B-217322 Dec. 24, 1984 84-2 CPD 693  
CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR  
RESOLUTION BY GAO*

Allegation that contract was improperly terminated concerns a matter of contract administration and is not for review under GAO's Bid Protest Procedures where termination is not based upon a determination that the contract was improperly awarded. Therefore, the protest is dismissed.

*B-217360 Dec. 24, 1984 84-2 CPD 694  
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--  
AFFIRMATIVE FINDING ACCEPTED*

GAO does not review a contracting officer's affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of contracting officials or that the solicitation contained definitive responsibility criteria that were not applied.

*B-214648 Dec. 26, 1984 84-2 CPD 695  
CONTRACTS--NEGOTIATION--CHANGES, ETC.--WRITTEN AMENDMENT  
REQUIREMENT*

Where material changes occur after issuance of solicitation for leasehold interest in real property, agency is required to issue written amendments to solicitation so that offerors are properly apprised of these changes.

B-214664 Dec. 26, 1984 84-2 CPD 696

*CONTRACTS--COMPETITIVE SYSTEM--COMPETITIVE ADVANTAGE--  
NOT RESULTING FROM UNFAIR GOVERNMENT ACTION*

The fact that a firm may enjoy a competitive advantage by reason of incumbency does not provide a basis to sustain a protest absent a showing of unfair action by the government.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION  
CRITERIA--SUBCRITERIA-REASONABLY RELATED TO CRITERIA*

An agency is not obligated to disclose the sub-factors of a particular evaluation factor if there is a sufficient correlation between the detailed evaluation factors used and the factor listed in the solicitation.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO  
PROTESTER*

New grounds of protest must independently satisfy the timeliness requirements of GAO's Bid Protest Procedures. Where a protester supplements its original timely protest with a new ground of protest more than 10 working days after the basis for it should have been known, the new ground is untimely and GAO will not consider it on the merits.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT  
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

A request for clarification of an ambiguous provision or an objection to an alleged impropriety in a solicitation which is apparent before the closing date for the receipt of initial proposals must be filed with GAO or the contracting agency by that date.

The required listing of sufficient potential minority business enterprise subcontractors to satisfy an affirmative action participation goal, or documentation of a good faith effort to meet that goal, relates to the bidder's responsibility. The low bidder's failure to show that it will be able to meet, or has reasonably attempted to meet, that goal here is a sufficient basis for the agency's conclusion that the firm is not responsible in this area.

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO

In general, GAO will not question a negative determination of responsibility unless the protester can demonstrate bad faith on the agency's part, or a lack of any reasonable basis for the determination.

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--  
CANCELLATION--REASONABLE BASIS--CHANGED CONDITIONS,  
NEEDS, ETC.

An agency's decision to cancel a solicitation because of changed conditions is not objectionable where the delay in proceeding to award clearly resulted from the bidder's failure to establish its responsibility.

*B-214869 Dec. 26, 1984 84-2 CPD 697 - Con.  
CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED*

A showing of bad faith requires irrefutable proof that contracting officials acted with the specific and malicious intent to injure the protester.

*B-215048 Dec. 26, 1984 84-2 CPD 698  
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS  
REQUIREMENT--ADMINISTRATIVE DETERMINATION--CURRENT NEEDS*

The need for ADP equipment compatibility is justified when the contracting activity provides essential services that would be impaired by using equipment from an alternative vendor, and when compatibility can only be achieved through an extensive software conversion effort.

*EQUIPMENT--AUTOMATIC DATA PROCESSING SYSTEMS--ACQUISITION,  
ETC.--EVALUATION--CRITERIA--DISCLOSURE REQUIREMENTS*

An agency is not required to disclose factors that will be used in evaluating responses to a Commerce Business Daily (CBD) announcement of its intent to issue a delivery order under a nonmandatory automatic data processing (ADP) equipment schedule contract, because the CBD notice itself is not a solicitation.

*B-215187 Dec. 26, 1984 84-2 CPD 699  
BONDS--BID--DEFICIENCIES--BID REJECTION*

An agency's rejection of a bid as nonresponsible based on a finding that one of the bidder's individual sureties on his bid bond is unacceptable because his total outstanding surety obligations are in excess of his net worth is unobjectionable since it is reasonably related to the purpose for which a bid guarantee is intended, namely, to protect the government's financial interest in the event of default on the bid.

*B-215187 Dec. 26, 1984 84-2 CPD 699 - Con.  
FUNDS--NONAPPROPRIATED--CONTRACT AWARDS--FEDERAL  
PROCUREMENT AND STATUTES*

Protest of procurement for the construction of a motorcycle trail in a national forest, funded by the state of Washington under an agreement with the United States Forest Service, is reviewable by GAO since the statute authorizing the agreement provides that such funds are to be considered appropriated.

*B-215399, & .2 Dec. 26, 1984 84-2 CPD 700  
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--  
COMPETITIVE RANGE EXCLUSION--REASONABLENESS*

Protest of exclusion of a proposal from the competitive range is denied where the protester has not shown that the technical evaluation finding its proposal unacceptable was unreasonable.

*CONTRACTS--PROTESTS--SUSTAINED--EVALUATION OF PROPOSALS--  
ERRONEOUS*

Protest is sustained where the protester's proposal was rejected because documents in its required microfiche sample were filmed out of sequence, but evidence suggests that it is more likely that the documents were filmed in the order they were in when the protester received them, and the rejection of the protester's proposal left only one more expensive, proposal in the competitive range.

*B-215579 Dec. 26, 1984 84-2 CPD 701  
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--  
REASONABLE*

Protest that the rejection of an offer under a Multiple Award Federal Supply Schedule solicitation was arbitrary is denied where the record indicates that the evaluation of the offer was reasonable under the applicable standards established by General Services Administration.

B-215585 Dec. 26, 1984 84-2 CPD 702

*BIDDERS--INQUIRERS--DUTY TO INQUIRE--EXISTENCE OF PATENT  
DISCREPANCY IN INVITATIONS*

Although a solicitation clause that intended to require the bidder to furnish standard products that had been satisfactorily in use as a system for 2 years from a manufacturer regularly engaged in the manufacture of such products was ambiguous, the agency properly rejected the bid from a company which did not meet the intent of the clause. The bidder, because of the patent ambiguity of the solicitation provision, should have inquired as to its intended meaning prior to bid opening.

B-215879 Dec. 26, 1984 84-2 CPD 703

*CONTRACTS--AWARDS--PROTEST PENDING--LEGALITY OF AWARD*

Protest that agency improperly awarded contract allegedly after a receiving notice of GAO protest is denied because alleged deficiency is a procedural one that does not affect the validity of the award.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--  
EVALUATORS--SELECTION*

Selection of Source Evaluation Board members falls primarily within the discretion of the procuring activity, and thus will not be questioned by our Office absent evidence of actual bias.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--  
TECHNICAL ACCEPTABILITY--ADMINISTRATIVE DETERMINATION*

We will question contracting officials' assessments of the technical merits of proposals only upon a clear showing of unreasonableness, abuse of discretion or violation of the procurement statutes or regulations. Moreover, the determination of a competitive range is primarily a matter of administrative discretion which we will not disturb absent a clear showing that the determination is unreasonable.

*B-216115, & .2 Dec. 26, 1984 84-2 CPD 705*  
*BIDS--ACCEPTANCE TIME LIMITATION--EXTENSION--AFTER*  
*EXPIRATION*

Bidders may be allowed to extend their bid acceptance periods after the bids have expired where the bidders offered the minimum acceptance period requested by agency and thus did not seek competitive advantage over other bidders which offered longer acceptance periods.

*B-214915.3, & .4 Dec. 27, 1984 84-2 CPD 706*  
*BIDS--AMBIGUOUS--AMBIGUITY NOT ESTABLISHED*

Bid which offered a "trade discount (rebate)" on 4 of 12 lots is not ambiguous where the only reasonable interpretation is that the bidder intended a reduction in price by the prescribed percentage for each line item in the specified lots.

*CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT*

Third-low bidder protesting that low and second-low bidders are nonresponsive is an "interested party" under GAO's Bid Protest Procedures.

*B-215967 Dec. 27, 1984 84-2 CPD 707*  
*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--*  
*CRITERIA--ADMINISTRATIVE DETERMINATION*

Protest that solicitation's lease termination provision should be deleted to allow more potential respondents to the solicitation is denied, since propriety of particular procurement is judged on whether government is obtaining reasonable prices through adequate competition and agency's receipt of responsive proposals at acceptable prices indicated adequate competition was available.

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--*  
*SPECIFICATIONS--MINIMUM NEEDS--ADMINISTRATIVE DETERMINATION*

Protest that solicitation's lease termination provision excludes offers from small business and

results in a higher than required cost to the government is denied where the agency establishes that the provision meets its legitimate minimum needs.

*B-216185 Dec. 27, 1984 84-2 CPD 708  
BIDS--INVITATION FOR BIDS--RESTRICTIVE--UNDUE RESTRICTION--  
DESIGN SPECIFICATIONS*

Solicitation which specifies metallic conduit for an underground steam distribution system, thereby excluding offer of plastic conduit systems, is unduly restrictive, where the contracting agency contends only that it does not require a plastic conduit system, but neither alleges nor shows plastic conduit is not satisfactory for the intended purpose or that a metallic system otherwise is necessary.

*B-216699 Dec. 27, 1984 85-1 CPD 1  
BONDS--BID--DISCREPANCY BETWEEN BID AND BID BOND--BID  
NONRESPONSIVE*

A bid is nonresponsive where the bid bond furnished with the bid listed one surety company on the face of the bond but the corporate seal and attached power of attorney for the signer of the bond is from another surety since it is unclear from the bid documents, including the bond, whether either surety is bound. Distinguishes B-209446.2, Apr. 29, 1983.

*B-216725 Dec. 27, 1984 85-1 CPD 2  
BIDS--RESPONSIVENESS--PRICING RESPONSE NONRESPONSIVE TO  
IFB REQUIREMENTS--FAILURE TO BID FIRM, FIXED PRICE*

Where bidder includes in its bid statement that "crane rental charges, for setting the units in place shall be extra," bid was properly rejected as nonresponsive for failure to offer firm, fixed price.

Protester's blanket statements of conformity with IFB requirements cannot cure defect created by failure to offer firm, fixed price, since even assuming full compliance with the IFB, total bid price for performance cannot be firmly established as required in advertised procurements.

*B-215092 Dec. 31, 1984 85-1 CPD 3  
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--OFFEROR--  
IDENTITY--DISCLOSURE*

Protest that an agency improperly disclosed to the protester's competitors that the protester was a prospective offeror is denied since the regulations do not prohibit such disclosures and the protester apparently was aware of how this might occur and could have taken steps to prevent it.

*CONTRACTS--NEGOTIATION--PATENTED ARTICLES, ETC.--INDEMNITY  
CLAUSES*

Protest that an agency failed to delete a Patent Indemnity clause incorrectly included in a solicitation is denied where the agency effectively informed offerors that it did not consider the clause to be critical and invited them to address deletion of the clause in their proposals.

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--MINIMUM  
NEEDS REQUIREMENT--REASONABLENESS*

Protest concerning a solicitation's delivery requirement is denied when an in camera review of the agency's justification for the requirement indicates that the requirement was reasonable.

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SUBMISSION  
DATE--ADMINISTRATIVE DETERMINATION*

Protest that agency allowed insufficient time for the preparation of proposals is denied where the time allowed exceeded the statutory minimum.

*B-215933 Dec. 31, 1984 85-1 CPD 4  
BIDS--EVALUATION--METHOD OF EVALUATION--AGGREGATE v.  
SEPARABLE ITEMS, PRICES, ETC.*

Where a solicitation clearly specifies that bids will be evaluated by totaling the priced for basic and option quantities, a protester who submits the low price for the basic quantity, but not the low total price, is not in line for award.

*B-215933 Dec. 31, 1984 85-1 CPD 4 - Con.  
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--  
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT  
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

GAO will not consider a protest, filed after bid opening, alleging that an evaluation scheme including prices for option quantities is improper because the government may not exercise the option. Under GAO Bid Protest Procedures, protests concerning alleged improprieties in solicitations must be filed before bid opening.

*B-216450 Dec. 31, 1984 85-1 CPD 5  
CONTRACTS--LABOR SURPLUS AREAS--EVALUATION PREFERENCE--  
ELIGIBILITY OF BIDDER--PLACE OF SUBSTANTIAL PERFORMANCE--  
IDENTIFICATION*

Where IFB provides that small business firms that are also labor surplus area (LSA) concerns will be considered for award before other small business concerns and requests that bidders submit information concerning their LSA status, a bid, at bid opening, must establish a bidder's commitment to perform the contract substantially in an LSA. Information submitted after bid opening may not be considered since it would constitute an improper late modification of the bid.

TRANSPORTATION LAW

B-215074 Dec. 10, 1984

GENERAL SERVICES ADMINISTRATION--TRANSPORTATION RATE AUDIT--  
METHODS OR PROCEDURES

Question of whether agency may reimburse contractor for prepaid freight charges in the absence of evidence specifically required by agency regulation is properly for consideration by GSA, which established procedures concerning the payment of transportation services.

B-214554 Dec. 14, 1984

TRANSPORTATION--CARRIERS--LIABILITY--EVIDENCE

Prima facie case of carrier liability is not established where shipper provides no substantive evidence to support allegation that he tendered items to the carrier which shipper later claimed were lost while in the carrier's possession.

Prima facie case of carrier liability is not established where written notice of loss and damage provided to carrier does not specify item in question, and there is no other contemporaneous evidence to support shipper's allegation that the item in question was not delivered by the carrier.

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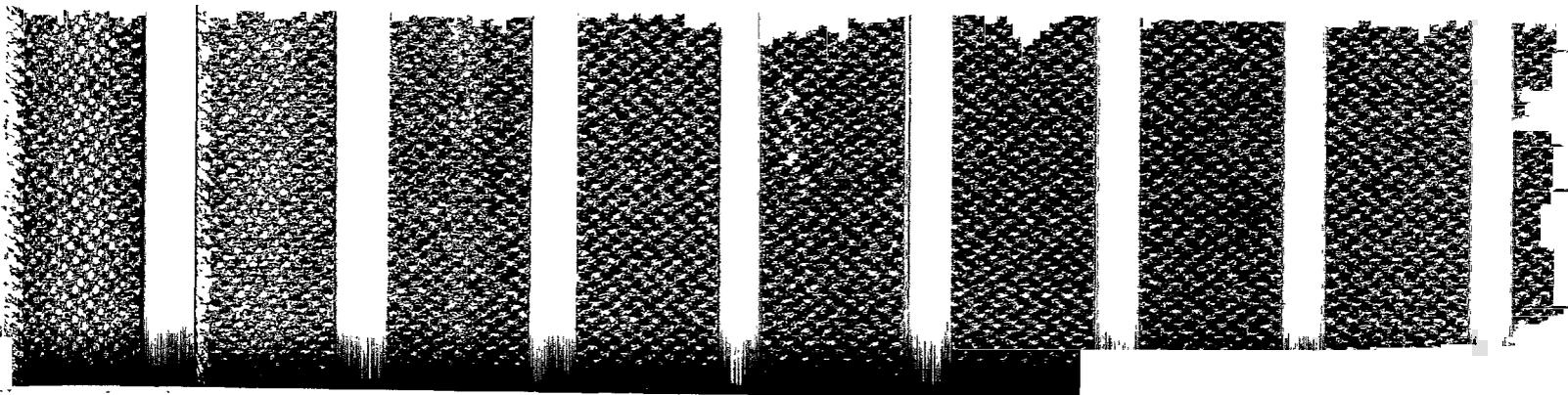
Reimbursement claims

Criteria for

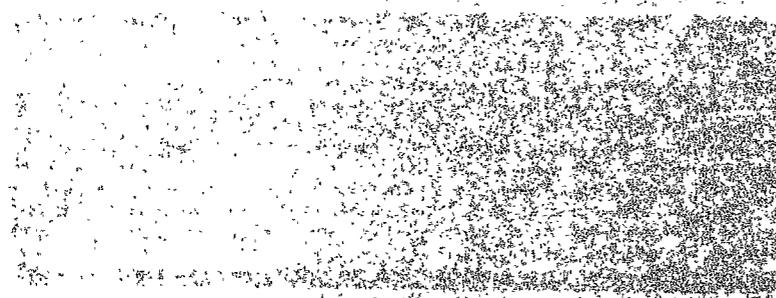
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ST. CHARLES HOTEL



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WASHINGTON, D. C. 20548  
OFFICIAL BUSINESS  
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